fraud renders the testimony too dangerous to leave to the jury. In any event, the jury, of course, may gauge the weight of the evidence according to the circumstances under which the declarations were made. See *Matteson* v. *New York Central R. Co.*, *supra*, p. 491; *Kent* v. *Lincoln*, *supra*, p. 598.

EVIDENCE — HEARSAY: IN GENERAL — USE OF ACCOUNT-BOOKS TO PROVE NON-DELIVERY OF GOODS. — In an action for goods sold, the defendant was allowed to introduce both his books of account and the testimony of his bookkeeper to show that there was no record of receiving the goods. *Held*, that this was error. *Winder* v. *Pollack*, 151 N. Y. Supp. 870 (Sup. Ct., App. Term).

The account-books could not be admitted under the ancient shop-book exception, for the defendant had a clerk. *Ruggles* v. *Gatton*, 50 Ill. 412. See *Smith* v. *Smith*, 163 N. Y. 168, 57 N. E. 300. But this limitation has undoubtedly been frequently relaxed by rather loose statutes. See 2 WIGMORE, EVIDENCE, § 1538. Under the shop-book exception, moreover, the evidence was inadmissible on the ground taken by the court, that it was merely negative. *Scott* v. *Bailey*, 73 Vt. 49, 50 Atl. 557; *Alexander* v. *Smoot*, 13 Ired. (N. C.) 461. But see 2 WIGMORE, EVIDENCE, § 1556. Under the broader exception admitting entries made in the course of duty, this objection should have no force. *Peck* v. *Pierce*, 63 Conn. 310, 28 Atl. 524; *Bastrop State Bank* v. *Levy*, 106 La. 586, 31 So. 164; *Huebener* v. *Childs*, 180 Mass. 483, 62 N. E. 729. *Contra*, *Lawhorn* v. *Carter*, 11 Bush. (Ky.) 7. Of course any record to be thus used as evidence that something did *not* occur must be both regular and exhaustive. *Shaffer* v. *McCrackin*, 90 Ia. 578, 58 N. W. 910; *Riley* v. *Boehm*, 167 Mass. 183, 45 N. E. 84. But these books were clearly inadmissible as entries in the course of duty, since the entrant was available in court. *Bartholomew* v. *Farwell*, 41 Conn. 107; *State Bank of Pike* v. *Brown*, 165 N. Y. 216, 59 N. E. 1. There is, however, still a third possible way of introducing this kind of evidence. Under modern statutes allowing parties to testify in their own behalf, account-books can be used to supplement or refresh a witness' memory, and the shop-book exception becomes unnecessary. *Nichols* v. *Haynes*, 78 Pa. 174; *Anchor Milling Co.* v. *Walsh*, 108 Mo. 277, 18 S. W. 904. *Bushnell* v. *Simpson*, 119 Cal. 658, 51 Pac. 1080. See 2 WIGMORE, EVIDENCE, § 1560. Accordingly, if the books in the principal case were tendered under this last theory, to supplement the clerk's recollection, they should have been admitted, though their proof was merely negative. *State* v. *McCormick*, 57 Kan. 440, 46 Pac. 777; *Guy* v. *Mead*, 22 N. Y. 462. But see *Sanborn* v. *Fireman's Ins. Co.*, 16 Gray (Mass.) 448.

FOREIGN CORPORATIONS — CONDITIONS UPON THE RIGHT TO DO BUSINESS — VALIDITY OF JUDGMENT ON FOREIGN CAUSE OF ACTION BASED ON SERVICE ON STATE OFFICER. — A Louisiana statute provided that suit might be commenced against a foreign corporation which did business in the state by service of process on the secretary of state if the corporation had failed to designate agents on whom process could be served. After such service and with no actual notice, judgment by default was entered against such a corporation in the state court on a cause of action arising outside the state. The corporation now seeks, in the federal court, to enjoin the enforcement of this judgment on the ground of lack of jurisdiction in the state court. *Held*, that the judgment will be enjoined. *Simon* v. *Southern Ry. Co.*, 236 U. S. 115.

See this issue, p. 804, for a discussion of the principles involved in this case.

FRANCHISES — RIGHT TO ENJOIN COMPETITOR ILLEGALLY DOING BUSINESS WITHOUT LICENSE. — The plaintiff telephone company sought to enjoin a competitor from engaging in the telephone business without a license from the Public Utilities Commission, which was required by law. KANSAS LAWS, 1911,

ch. 238, § 31. *Held*, that no injunction will be granted. *Baxter Tel. Co.* v. *Cherokee County Mut. Tel. Ass'n*, 146 Pac. 324 (Kan.).

Where a public franchise is set up as a defense to *primâ facie* tortious conduct, its validity may be challenged by the plaintiff, even though a private individual. *Smith* v. *Warden*, 86 Mo. 382; *Vredenburgh* v. *Behan*, 33 La. Ann. 627. But in the principal case the defendant's act in stringing competing wires was not *per se* tortious, for the plaintiff's franchise was not exclusive. As the mere usurpation of a public privilege could not without more constitute a private wrong to the plaintiff, the result seems clearly correct. *Jersey City Gas Light Co.* v. *Consumers' Gas Co.*, 40 N. J. Eq. 427; *Coffeyville Gas, etc. Co.* v. *Citizens' Natural Gas, etc. Co.*, 55 Kan. 173, 40 Pac. 326. *Cf. Cope* v. *District Fair Ass'n*, 99 Ill. 489.

FRAUDULENT CONVEYANCES — TRANSFERS FOR VALUE — CONVEYANCE IN SATISFACTION OF UNENFORCEABLE EXPRESS TRUST. — A testator was induced not to change a will leaving property to A, by A's promise to give half the property to B. A later transferred to B land equal in value to half of the property received under the will. This transfer made A insolvent, and his creditors bring this action to have it set aside as fraudulent. *Held*, that the conveyance will not be set aside. *Walter Farrington Tiling Co.* v. *Hazen*, 151 N. Y. Supp. 523 (App. Div.)

A *bonâ fide* conveyance by an insolvent debtor in preference of a creditor who has an enforceable legal or equitable claim against him cannot be set aside as in fraud of creditors. WAIT, FRAUDULENT CONVEYANCES, 3 ed. § 390; *Glover* v. *Lee*, 140 Ill. 102, 29 N. E. 680; *Atlantic National Bank* v. *Tavener*, 130 Mass. 407. A mere moral obligation, however, is not sufficient to support such a conveyance. *Fair Haven Marble & M. S. Co.* v. *Owens*, 69 Vt. 246, 37 Atl. 749; *Cock* v. *Oakley*, 50 Miss. 628. But a conveyance in satisfaction of an unenforceable trust or in settlement of a debt barred by the statute of limitations or the statute of frauds, cannot be attacked by creditors on the ground that the debtor could have set up an unconscionable defense, for the law regards such obligations as subsisting though the remedy is barred. *French* v. *Motley*, 63 Me. 326; *Silvers* v. *Potter*, 48 N. J. Eq. 539, 22 Atl. 584; *Norton* v. *Mallory*, 63 N. Y. 434. See 13 HARV. L. REV. 608. Cf. *Holden* v. *Banes*, 140 Pa. 63, 21 Atl. 239. The decision of the principal case is based on this last proposition. In fact, however, it seems that the conveyance was in satisfaction of a perfectly valid equitable obligation; for where a testator is prevented from revoking a gift in his will by the promise of the beneficiary to hold it for another, the beneficiary becomes liable in equity as constructive trustee of the property received. *Dowd* v. *Tucker*, 41 Conn. 197; *Belknap* v. *Tillotson*, 82 N. J. Eq. 271, 88 Atl. 841. See 28 HARV. L. REV. 237, 379. And if, as the principal case seems to indicate, the estate conveyed represented the proceeds of the bequest, the trust attached to this very property. On this hypothesis, the result of the principal case is more easily reached as property subject to a constructive trust is not subject to the claims of creditors. *Cox* v. *Arnsmann*, 76 Ind. 210. See POMEROY, EQ. JUR., 3 ed., §§ 721, n. 1, 1053.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — JURISDICTION OF STATE COURT OVER SUIT AGAINST INTERSTATE CARRIER WITHOUT PRIOR ACTION BY THE COMMISSION. — The railroad had established certain rules governing car distribution among coal companies for interstate shipments during periods of car shortage. The plaintiff brings suit in a state court complaining that the railroad failed to furnish the quota which, according to these rules, it should have received. *Held*, that the state court has jurisdiction. *Pennsylvania R. Co.* v. *Puritan Mining Co.*, 237 U. S. 121.